

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BRANDON AUSTIN,

Plaintiff,

v.

UNIVERSITY OF OREGON; SANDY WEINTRAUB; CHICORA MARTIN; ROBIN HOLMES; and MICHAEL R. GOTTFREDSON, all in their individual capacities only,

Defendants.

DOMINIC ARTIS and DAMYEAN DOTSON,

Plaintiffs,

v.

UNIVERSITY OF OREGON; SANDY WEINTRAUB; CHICORA MARTIN; ROBIN HOLMES; and MICHAEL R. GOTTFREDSON,

Defendants.

MCSHANE, Judge:

The matter before the court is defendants' motion for attorney fees and costs presented in accordance with Rule 54 of the Federal Rules of Civil Procedure. Def.'s Mot., ECF No. 63; *Artis v. Uni. of Oregon*, D. Or. 16-cv-647-MC, ECF No. 75.¹ Defendants seek an award of attorney fees in the amount of \$52,142.25, and an award of costs in the amount of \$800.00. *Id.* The

¹ Unless stated otherwise, citations to the docket refer to the lead case, D. Or. 6:15-cv-2257-MC.

amount sought is limited to the attorney fees incurred in defending against plaintiffs' due process claims. *Id.* Defendants' main argument is that because there is no clearly established constitutional right to attend the University or to the plaintiffs' athletic scholarships, the due process claims were particularly frivolous. Def.'s Mot. 5-6, ECF No. 63. Because there is no clearly established constitutional right, the individually named defendants were "indisputably entitled to qualified immunity." *Id.* at 7.

A district court has discretion to award attorney's fees to a prevailing party (to include a defendant) "upon a finding that plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subject bad faith." *Christiansburg Garment Co. v. Equal Employment Opportunity Comm'n*, 434 U.S. 412, 421 (1978). While the defendants' argument has some merit, their motion for attorney fees and costs is denied. Because the defendant is a University, an award of attorney fees under the circumstances has the potential of chilling future students from filing what they believe to be legitimate civil rights claims against university officials. In addition, the plaintiffs in this case presented a good faith argument that their right to an education should be protected by the constitution. There is a continuing national dialogue among lawyers and courts with regards to what property interest attaches to a college admission or scholarship. There is also great debate nationally with regard to the level of due process that colleges should be required to afford students accused of sexual misconduct.

Defendants' motion for attorney fees and costs is DENIED.

IT IS SO ORDERED.

DATED this 16th day of November, 2017

s/Michael J. McShane

Michael McShane
United States District Judge